IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1656 OF 20O5

Shri. Imran Muddassir Sayyed,
Age 24 years Approx. residing
at R/o S. M. Hussain Chawl,
Prem Nagar, Idgah Maidan,
Jogeshwari (East),
Mumbai-400060.
(At present detained at
Nasik Road Central Prison
at Nasik. .. .. .. Petitioner

V/s.

1. Shri A. N. Roy,
Dy. Commissioner of Police.
Greater Bombay.

2. The State of Maharashtra..

3. The Superintendent, Nasik
Road Central Prison,
Nasik. .. .. .. Respondents

Shri U. N. Tripathi, Advocate, for the Petitioner.

Shri. D.S. Mhaispurkar, A. P. P., for the Respondent-State.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.
DATE : SEPTEMBER 9, 2005

ORAL JUDGMENT :(PER S. B. MHASE, J.)

. The petitioner has approached this Court invoking the jurisdiction under Article 226 of the Constitution of India seeking a writ of habeas corpus, inter alia, challenging the order of detention bearing No. 90/PCB/DP/Zone-X/2004 dated 10-09-2004 issued under section 3 (i) of the Maharashtra Prevention of Danger-ous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 passed by the Commissioner of Police, Brihan Mumbai.

2. Earlier, the above-referred to order detaining the present petitioner was challenged by his father by filing Criminal Writ Petition No. 2755 of 2004, which was dismissed by this Court by judgment and order dated 25-4-2005. This is the second petition filed by the detenu himself raising some other grounds which were not raised in the earlier petition by his father. Needless to state that the principle of res judicata is not applicable to the habeas corpus petition.

3. In this criminal writ petition also, even though there are several grounds raised, learned Counsel for the petitioner presses ground No. (E) for the purposes of challlenging the order in question. The ground No. (E) is as follows :

> "The Petitioner says and submits that the detenue was in judicial custody in C. R. No. 62/04 even though he was granted bail but not availed. The detaining authority has not applied his mind to the facts of the case that

being already in custody he has been deprived from acting in any manner prejudicial to the maintenance of Public Order. It is unwarranted and unjustified to detain a person under preventive law when he is already in custody for committing serious offences. This shows non-application of mind of the detaining authority. If the apprehension of the detaining authority that he will avail bail and for that purpose detention order is passed that it becomes punitive and not preventive. The order suffers from the vice of non-appliciation of mind. The order of detention is illegal and bad in law, ought to be quashed and set aside. "

4. The Detaining Authority has filed an affidavit-in-reply on 23-8-2005 and the said ground No. (E) is answered in paragraph (10) as under :

"10. With reference to paragraph 9 (E) of the petition, it is denied that I have not applied my mind while issuing the Order of Detention for want of considering the fact that the detenu was in judicial custody in CR No. 62 of 2004 even though he was granted bail, but not availed the same. I state that in para 7 of the Ground of Detention, I have, in clear terms, mentioned that the detenu was granted bail in respect of CR No. 62 of 2004 registered at Meghwadi Police Station. However, he has not availed the same. I further state that the detenu could have availed the bail at any point of time and after becoming a free person, he was likely to indulge in similar prejudicial activities as his tendencies and inclination reflected in the offence committed by him. In view of this, I deny that the detenu was sufficiently prevented as he was in custody from indulging in similar

prejudicial activities and the Order of Detention was unwarranted. "

Learned Counsel for the petitioner submitted that the Detaining Authority has failed to apply his mind to the facts and circumstances of the case and, more specifically, to the fact that bail had been granted, but the detenu has not availed of the said bail. However, the Detaining Authority has rightly answered in the affidavit -in-reply paragraph (7) of the grounds of detention. It is the case of the Detaining Authority that the detenu has been granted bail in respect of CR No. 62 of 2004 registered at Meghwadi Police Station and the said bail has not been availed of by the detenu. However, having found that if the detenu avails of the same, he can be a free person and is likely to indulge into similar prejudicial activities, and therefore, the detention order was passed. His tendencies and inclination towards criminal acts have been considered by the Detaining Authority and thereafter the order of detention has been passed. The submission made in respect of the non-application of mind by the Detaining Authority is without any merit.

5. No other ground is pressed in service by learned Counsel for the petitioner. We do not find that there is any merit in the petition and it is hereby rejected and the rule is discharged therein.

(S.R.SATHE,J.) **(S.B.MHASE,J.)**

logic:MPR/2005.